

EXHIBIT 9

David L Campana and State of Alaska 30(b) (6) - Volume II

August 20, 2008

Anchorage, AK

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT OF ANCHORAGE

-----X

STATE OF ALASKA,)

Plaintiff,)

vs.)

ALPHARMA BRANDED PRODUCTS DIVISION,)

INC., et al.,)

Defendants.)

-----X

Case No. 3AN-06-12026 Civil)

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CAPTIONS CONTINUED ON FOLLOWING PAGE

VOLUME II

VIDEOTAPED DEPOSITION OF DAVID L. CAMPANA

and STATE OF ALASKA 30(b) (6)

Taken August 20, 2008

Taken by the Defendants at

Captain Cook Hotel, Whitby Room

939 West 5th Avenue

Anchorage, Alaska

Reported by: Mary A. Vavrik, RMR

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1 Health?	1 A. I believe that.
2 A. That was first in 1989, I believe.	2 Q. So at least for some of the drugs and
3 Q. Okay. First Health was acting on	3 for some of the times, Alaska had URAs for Mylan
4 behalf of the State of Alaska, right?	4 Pharmaceuticals' drugs, right?
5 A. Yes.	5 MR. BURNHAM: Objection, form.
6 Q. So if -- so if First Health has URAs,	6 THE WITNESS: I believe that Mylan did
7 in a sense so does the State of Alaska, right,	7 provide URAs at periods of time and that we had
8 because they are acting on its behalf, right?	8 submitted rebates to Mylan.
9 A. Yes.	9 BY MR. KATZ:
10 MR. BURNHAM: Object to form.	10 Q. When you said that Mylan provided URAs,
11 BY MR. KATZ:	11 you meant that Mylan provided AMPs, right?
12 Q. So Alaska had the URAs for Mylan	12 A. Yeah, right. Rather Mylan provided
13 Pharmaceuticals' drugs, right?	13 AMPs to CMS who calculated the URAs.
14 MR. BURNHAM: Objection, form.	14 Q. Okay. We talked about the formula for
15 THE WITNESS: I don't know that.	15 calculating the URA. And before 1994 it was 10
16 BY MR. KATZ:	16 percent of AMP, right?
17 Q. Well, First Health had the URAs for	17 A. That's my recollection.
18 Mylan Pharmaceuticals' drugs, right? That you	18 Q. So if Alaska received a URA for, say,
19 know.	19 \$2.50, then Alaska would know that the AMP is
20 MR. BURNHAM: Object to form.	20 \$25, right?
21 THE WITNESS: I would have to assume	21 A. If we reversed the calculation, we
22 that. And based on looking at invoices,	22 would come up with that.
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1 sometimes they had -- had URAs and sometimes they	1 Q. And it's a simple calculation, right?
2 didn't have URAs, depending on whether the	2 A. Yes.
3 manufacturer actually submitted those.	3 Q. And have you ever done that?
4 BY MR. KATZ:	4 A. Not that I can remember.
5 Q. Assuming CMS received an AMP from Mylan	5 Q. Do you know if anyone else at Alaska
6 Pharmaceuticals and calculated a URA, that URA	6 Medicaid has ever done that?
7 would then be passed on to First Health who was	7 A. I don't know.
8 acting on behalf of Alaska, right?	8 Q. Have you ever looked at the URAs
9 MR. BURNHAM: Objection, form.	9 received for any drugs and compared them to any
10 THE WITNESS: There is assumptions in	10 other prices available to Alaska Medicaid?
11 there.	11 A. I had looked at some of the URAs
12 BY MR. KATZ:	12 received for generic drugs and compared them to
13 Q. What assumptions?	13 the AWP and noticed that there was a huge
14 A. Well, the assumption is that we would	14 difference.
15 have to assume that Mylan passed on the AMP to	15 Q. When did you do that?
16 CMS, CMS received that AMP, and then calculated	16 A. Somewhere along the line.
17 the URA and then provided that to First Health.	17 Q. Was it ten years ago?
18 Q. Let me ask you this: Did the State of	18 A. It was somewhere during the initial
19 Alaska invoice Mylan Pharmaceuticals for rebates?	19 period of the rebates.
20 A. I believe they did.	20 Q. So that would be in the early '90s?
21 Q. Okay. In order to invoice Mylan	21 A. 1991 to 1995.
22 Pharmaceuticals, it needed the URAs, right?	22 Q. And when you compared the URAs to the

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1 MR. MANGI: Go ahead.	1 pharmacies, other than that Verme study?
2 MR. BURNHAM: Why don't we take a break	2 A. No.
3 because we have to switch around here.	3 Q. Look at Exhibit 37, please. Exhibit 37
4 THE VIDEOGRAPHER: We will move off	4 is the Verme study, is that correct?
5 record at 5:40.	5 A. Yes.
6 (Off the record.)	6 Q. Look down in paragraph 1.4.1 where they
7 THE VIDEOGRAPHER: We are on record,	7 describe the survey that they sampled. You see
8 5:44.	8 that?
9	9 A. Yes.
10 EXAMINATION	10 Q. And you understood that they surveyed a
11 BY MR. BURNHAM:	11 total of 12 providers?
12 Q. Mr. Campana, as you know, I'm Richard	12 A. Yes.
13 Burnham. I'm one of the counsel representing the	13 Q. And they surveyed 22 drugs?
14 State in this action.	14 A. Yes.
15 A. Yes.	15 Q. How many providers were there in Alaska
16 Q. Has any drug manufacturer since 1990	16 at that time, approximately?
17 ever informed you that its published AWP was	17 A. There was approximately 100 providers.
18 simply a number that they made up?	18 Q. And about how many prescription drugs
19 MS. WITT: Object to the form. And I	19 NDCs were there at that time?
20 assume we can have the same agreement from the	20 A. I believe at that time there was in
21 plaintiffs' counsel that will cover everyone? Is	21 excess of 140 drugs, drug NDCs.
22 that all right with the Department of Justice as	22 Q. So did anyone in your department
1	well?
2 THE WITNESS: I don't remember.	1 consider this Verme survey to be a sufficient
3 MR. HENDERSON: Yes, that's fine.	2 sampling to permit you to use a reimbursement
4 BY MR. BURNHAM:	3 formula of AWP minus 13 percent?
5 Q. Do we have Exhibit 16 handy, please?	4 MS. WITT: Objection.
6 Do you have Exhibit 16?	5 THE WITNESS: It was not an adequate
7 A. Yes.	6 sample.
8 Q. If you go to the second page, please,	7 BY MR. BURNHAM:
9 the fourth paragraph, you were asked about this	8 Q. Take a look at Exhibit 41, please. And
10 earlier. The representation is made there that	9 Verme's -- Verme found, from what they did
11 it is the intent of the State of Alaska "to pay	10 survey, the pharmacies seemed to be obtaining
12 no more than documented, estimated acquisition	11 drugs at AWP minus 13 percent, correct?
13 cost on a statewide average basis for	12 A. For those 12 pharmacies.
14 ingredients." Do you see that?	13 Q. And those 22 drugs?
15 A. Yes.	14 A. For those 22 drugs.
16 Q. To your knowledge, did that intention	15 Q. Look at Exhibit 41, please. And turn
17 of the State ever change since this document was	16 to page 6 of that document.
18 written in 1988?	17 MR. HENDERSON: I'm sorry, which
19 A. No.	18 exhibit is that?
20 Q. Since you became employed by the State,	19 MR. BURNHAM: I'm sorry. It's Exhibit
21 have you ever been provided with a study of	20 41. Bates number starts with 68.
22 actual acquisition costs applicable to Alaska	21 THE WITNESS: Okay.
	22 BY MR. BURNHAM:

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<p>1 Q. Page 6, paragraph (f). This is a 2 document that I understood was in your files when 3 you showed up for employment at the State of 4 Alaska?</p> <p>5 A. Yes.</p> <p>6 Q. And it's represented there in paragraph 7 (f) that "Many of the pharmacies" received 8 financing "on the condition that these pharmacies 9 buy their drugs from this wholesaler at no 10 discount from AWP." You see that?</p> <p>11 A. Yes.</p> <p>12 Q. So when you showed up for work at the 13 State of Alaska, you had an inadequate sampling 14 suggested -- suggesting a reimbursement rate of 15 AWP minus 13 percent, and you had representations 16 from your medical director that other pharmacies 17 purchased at full AWP, correct?</p> <p>18 MS. WITT: Objection, leading.</p> <p>19 MR. KATZ: Leading.</p> <p>20 MR. TORBORG: Leading.</p> <p>21 THE WITNESS: I had information in my 22 files that showed that there was a small sample,</p>	<p>1 Verme report?</p> <p>2 A. No.</p> <p>3 Q. Did you have any information indicating 4 that Alaska's methodology provided a profit for 5 any drugs not included in the Verme report?</p> <p>6 A. No.</p> <p>7 Q. Let's look at Exhibit 32, please. You 8 have that?</p> <p>9 A. Yes.</p> <p>10 Q. If you turn to page 12, please, at the 11 bottom. You were asked some questions about Mr. 12 Ron Sedgwick's testimony reflected in this 13 document. Indicated that he was a pharmacist 14 from Juneau, a member of the pharmacy association 15 and a member of the pharmacy steering committee. 16 Remember being asked about that?</p> <p>17 A. Yes.</p> <p>18 Q. And the pharmacy steering committee was 19 the group that formulated Alaska's reimbursement 20 methodology?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Let's look at what Mr. Sedgwick</p>
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<p>1 and then there was information that was provided 2 to CMS that showed that there was -- some 3 pharmacies purchased at AWP without discount.</p> <p>4 BY MR. BURNHAM:</p> <p>5 Q. And the Alaska formula in place when 6 you arrived was AWP minus five percent, right?</p> <p>7 MR. KATZ: Objection, form.</p> <p>8 THE WITNESS: That is correct.</p> <p>9 BY MR. BURNHAM:</p> <p>10 Q. Prior to filing this -- or this lawsuit 11 being filed, did you receive any data for Alaska 12 pharmacies causing you to conclude that AWP minus 13 five percent was an inappropriate figure to use 14 as a statewide average EAC for Alaska?</p> <p>15 A. I did not receive any.</p> <p>16 Q. We talked about profits in your 17 testimony yesterday. Other than the Verme report 18 showing that some small number of pharmacies were 19 able to purchase at AWP minus 13 percent, did you 20 have any data indicating that Alaska's 21 methodology for estimating acquisition costs paid 22 a profit to any pharmacies not included in the</p>	<p>1 had to say in his testimony. Do you see where he 2 reports that "AWP is the actual price that he 3 pays the wholesaler before discounts"?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And then he goes on to identify 6 two discounts, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Indicates one discount can be gained by 9 ordering certain quantities of drugs, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And one discount can be obtained by 12 paying in advance?</p> <p>13 A. That's correct.</p> <p>14 Q. And then he reported to the legislature 15 the result is, if you get both of those 16 discounts, a cost savings to the pharmacist of 17 AWP minus 10 percent, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Did he disclose any information 20 in his testimony regarding actual acquisition 21 costs for rural pharmacies?</p> <p>22 A. Not that I remember.</p>

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<p>1 Q. Did he disclose actual acquisition 2 costs for pharmacies that were unable to order 3 sufficient quantities of drugs to obtain this 4 discount he was referring to from AWP?</p> <p>5 A. No.</p> <p>6 Q. Did he give any information about the 7 discount that was obtained by paying in advance?</p> <p>8 A. No.</p> <p>9 Q. Did he give any indication of what 10 percentage of the providers in Alaska could 11 actually qualify for either one of these 12 discounts?</p> <p>13 A. No.</p> <p>14 Q. Now, when Alaska developed its 15 methodology for reimbursement of pharmacies and 16 other drug providers, it was required to provide 17 that to the federal government, is that accurate?</p> <p>18 A. That's accurate.</p> <p>19 Q. And was the State required to justify 20 that methodology in some fashion?</p> <p>21 A. It's my understanding that they did 22 have to justify it in letters to CMS; HCFA at</p>	<p>1 just based on what was provided back when I was 2 working in retail.</p> <p>3 Q. Exhibit 61, please. You were asked 4 about the answer to Interrogatory No. 8. Do you 5 recall being asked about that and you responded 6 that that was an untrue statement?</p> <p>7 A. Let's see. Interrogatory 8.</p> <p>8 Q. The answer, the first sentence.</p> <p>9 A. Oh.</p> <p>10 Q. "Given Alaska did not know providers' 11 actual acquisition costs," you see that?</p> <p>12 A. Okay.</p> <p>13 Q. Did Alaska know all of the providers' 14 actual acquisition costs in the state?</p> <p>15 A. No.</p> <p>16 Q. Is it accurate to say, as is written 17 there, that therefore "no person knew at any time 18 that the described reimbursements exceeded 19 providers" -- that's plural -- "actual 20 acquisition cost"?</p> <p>21 MR. KATZ: Objection, form.</p> <p>22 THE WITNESS: It's accurate to say that</p>
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<p>1 that time.</p> <p>2 Q. They would have to provide sufficient 3 data for the federal government to approve the 4 methodology?</p> <p>5 A. At least sufficient description of -- 6 of what they had determined or found.</p> <p>7 Q. Okay. And the federal government has 8 approved Alaska's methodology of AWP minus five 9 percent?</p> <p>10 A. That is true.</p> <p>11 MR. KATZ: Objection, form.</p> <p>12 BY MR. BURNHAM:</p> <p>13 Q. When did you first learn of an AWP -- 14 strike that. When did you first learn of drugs 15 that pharmacies could purchase for less than half 16 of the published AWP?</p> <p>17 A. I'm not sure where I picked that up, 18 but for generic drugs there was information that 19 you could purchase those at a -- at a very small 20 rate compared to AWP.</p> <p>21 Q. And is that something recent?</p> <p>22 A. I remember some of that information</p>	<p>1 if you look at all providers.</p> <p>2 MR. BURNHAM: Okay. Thank you. I have 3 no more questions.</p> <p>4</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. MANGI:</p> <p>7 Q. All right, sir. You remember me. I am 8 Adeel Mangi. I'm going to ask you just few more 9 questions. I appreciate the day is wearing on. 10 Mr. Burnham asked you a number of questions 11 today. Did you have occasion to discuss those 12 questions with him before testifying now?</p> <p>13 MR. BURNHAM: Objection. You don't 14 have to answer anything about what we discussed. 15 You don't have to answer.</p> <p>16 BY MR. MANGI:</p> <p>17 Q. Did you meet with Mr. Burnham at the 18 break that took place prior to his questioning 19 you?</p> <p>20 A. No.</p> <p>21 Q. Now, Mr. Burnham showed you a number of 22 letters that were sent from Alaska to CMS. You</p>

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<p>1 remember that, or HCFA?</p> <p>2 A. Yes.</p> <p>3 Q. Now, as we discussed yesterday, when</p> <p>4 Alaska was communicating with HCFA, it was</p> <p>5 important and understood to be important that</p> <p>6 Alaska use particular language and phrase things</p> <p>7 in a particular way, correct?</p> <p>8 MR. BURNHAM: Objection, form.</p> <p>9 THE WITNESS: Alaska used certain --</p> <p>10 certain language in the discussion with CMS, or</p> <p>11 HCFA in those days.</p> <p>12 BY MR. MANGI:</p> <p>13 Q. Now, one of the phrases used in --</p> <p>14 which Mr. Burnham pointed you to is "documented"</p> <p>15 EAC," correct?</p> <p>16 A. EAC was -- was discussed.</p> <p>17 Q. Now, when Alaska used the term</p> <p>18 "estimated acquisition cost," it understood that</p> <p>19 that's something different from actual</p> <p>20 acquisition cost, correct?</p> <p>21 A. If you look at those -- if I look at</p> <p>22 those two terms now, I see a difference.</p>	<p>1 MR. BURNHAM: Objection, form.</p> <p>2 BY MR. MANGI:</p> <p>3 Q. Well, those are the factors that you</p> <p>4 wrote up in your white paper which you sent to</p> <p>5 CMS as justification for the methodology,</p> <p>6 correct?</p> <p>7 A. Those were in my white paper.</p> <p>8 Q. So certainly you considered those</p> <p>9 factors of importance to CMS when defending</p> <p>10 Alaska's methodologies, yes?</p> <p>11 A. Yes.</p> <p>12 Q. Mr. Burnham also asked you a number of</p> <p>13 questions about the Verme study. You remember</p> <p>14 those?</p> <p>15 A. Yes.</p> <p>16 Q. The Verme study is not the only source</p> <p>17 of information you have ever come across relating</p> <p>18 to AWP and acquisition costs, yes?</p> <p>19 A. It's the only one that was used in a</p> <p>20 systematic function or a study form.</p> <p>21 Q. That's not what I asked you, sir. It</p> <p>22 is one source of information. I appreciate it's</p>
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<p>1 Q. And indeed, the folks who set up the</p> <p>2 system in 1989, Mr. Hansen, Ms. Busch, they</p> <p>3 certainly understood there was a difference, too.</p> <p>4 That's obvious from the documents we looked at</p> <p>5 yesterday, correct?</p> <p>6 MR. BURNHAM: Objection, form.</p> <p>7 THE WITNESS: I believe that they did</p> <p>8 see a difference in those.</p> <p>9 BY MR. MANGI:</p> <p>10 Q. And indeed, one of the key differences</p> <p>11 that -- within the estimated acquisition cost</p> <p>12 methodology, CMS affords states like Alaska</p> <p>13 flexibility to take account of local</p> <p>14 circumstances, correct?</p> <p>15 A. CMS did look at that, apparently, in</p> <p>16 approving the state plan.</p> <p>17 Q. And those local circumstances you are</p> <p>18 allowed to take account of in determining your</p> <p>19 methodology include factors like what's required</p> <p>20 to get access, political circumstances in the</p> <p>21 state, things of that nature, correct?</p> <p>22 A. I don't know that.</p>	<p>1 the only study you have seen until the current</p> <p>2 one pertaining to Alaska specifically. My</p> <p>3 question is different. It's not your only source</p> <p>4 of information about AWP, correct?</p> <p>5 A. It's not the only source about -- well,</p> <p>6 I have other sources about AWP.</p> <p>7 Q. For example, one source is the classes</p> <p>8 you took in pharmacy school in the 1960s, right?</p> <p>9 A. There were information about average</p> <p>10 wholesale that I learned in college.</p> <p>11 Q. Another source of information are</p> <p>12 people at the Medicaid agency like Mr. [sic]</p> <p>13 Busch and Mr. Hansen, right?</p> <p>14 MR. HENDERSON: Objection.</p> <p>15 THE WITNESS: There was other sources,</p> <p>16 but not complete.</p> <p>17 BY MR. MANGI:</p> <p>18 Q. Another source -- there were other</p> <p>19 sources of information, yes?</p> <p>20 A. There were --</p> <p>21 MR. HENDERSON: Objection.</p> <p>22 THE WITNESS: -- other sources of</p>